No. 10-1181

In The

Supreme Court of the United States

LYNETTE TROUTMAN,

Petitioner,

v.

ESTATE OF ROGER TROUTMAN, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals For Montgomery County, Ohio, Second Appellate District

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW BY PETITIONER

Whether or not the decision of the Court of Appeals that a deceased author's interest in royalties attributable to post-1978 copyrights passed to the administrator as personal property which may be distributed to the deceased author's creditors, leaving the surviving spouse and children destitute, is consistent with applicable federal law.

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STATEMENT OF THE CASE

This case was precipitated by Larry Troutman's homicide of his brother, Roger Troutman, and Larry Troutman's subsequent suicide. The brothers had been heavily involved in the music industry, and each had significant copyrights generating streams of royalty income to each of them. These royalty payments continue to the present day (see Entry Granting Summary Judgment In Part and Denying Summary Judgment In Part, Petitioner's Appendix A, App. 1).

In the course of the litigation, the Montgomery County, Ohio, Probate Court found that all but one of Larry Troutman's copyrights post-date January 1, 1978, and the single pre-1978 song has generated no royalties (see Entry, Petitioner's Appendix A, App. 1 and Entry and Decision Declaring Royalties Belong to the Estate of Larry Troutman, Petitioner's Appendix B, App. 9).

Roger Troutman's estate made a wrongful death claim against the Larry Troutman estate which matter was later settled by an agreement to pay two-thirds of all amounts received by the Estate after payment of statutorily-required priority payments. The Probate Court approved this settlement on April 11, 2008 (see Notification of Proposed Settlement Agreements, attached hereto as Appendix A, App. 1 and Order authorizing settlement, attached hereto as Appendix B, App. 24).

On March 14, 2008, Larry Troutman's widow, Petitioner Lynette Troutman, filed the instant action, claiming that the copyrights owned by Larry Troutman before his death were to pass to his heirs rather

than to his estate, based on an admixture of claimed constitutional law and case law predating the 1976 Copyright Act. While Lynette Troutman points out in her Petition for Writ of Certiorari that she received payments from the recording companies directly for a period of time, such payments were precipitated by Lynette Troutman's representation to the recording companies that she was entitled to receive such royalties. When the administrator de bonis non of the estate of Larry Troutman, Michael Conway, was appointed, he informed the recording companies of his appointment and the royalties from that time have been paid into the Larry Troutman estate.

In fact, as demonstrated below, under the current copyright law the Larry Troutman estate is the appropriate recipient of such royalties until Larry Troutman's heirs are entitled to exercise their termination rights under the copyright statute, beginning in 2013. Until that time, the copyright laws are clear that the estate, and not the heirs, is the appropriate recipient of such royalties.

THE INSTANT CASE DOES NOT WARRANT REVIEW BY THIS COURT

Given the clarity of the copyright law and the fact that none of the accepted reasons for a grant of certiorari are present in this case, this Court should deny Petitioner's request for Writ of Certiorari.

A. Existing copyright law is clear, and has been uniformly interpreted, to require that royalties currently be paid to the Larry Troutman estate and not directly to his heirs.

Federal copyright law and Ohio probate law expressly address the situation herein and provide that presently Appellant only has an interest in the copyright revenue stream through distributions from Larry Troutman's estate.

Copyright ownership essentially consists of a bundle of rights such as the right to reproduce the copyrighted works, distribute copies of the copyrighted work, and perform the copyrighted work. 17 U.S.C. § 106(1, 3, 4). Any of these rights may be transferred by a copyright owner by any means of conveyance. 17 U.S.C. § 201(d). As stated in the legislative comments to this section:

> "The principle of unlimited alienability of copyright is stated in the clause (1) of Section 201(d). Under that provision the ownership of a copyright, or any part of it, may be transferred by any means of conveyance or by operation of law, and is to be treated as personal property on the death of the owner . . .
>
> Clause (2) of subsection (d) . . . means that any of the exclusive rights that go to make up a copyright, including those enumerated in Section 106 and any subdivision of them,

> can be transferred and owned separately. . . ."

When such a transfer has taken place, copyright law gives the author or his statutorily-specified successor(s) the right to terminate the transfer or assignment (17 U.S.C. § 203). The preamble of 17 U.S.C. § 203 provides:

> "In the case of any work other than a work made for hire, the exclusive or non-exclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions: . . . "

Upon exercise of the termination right, all rights covered by the grants revert to the persons owning the termination interest (17 U.S.C. § 203(b)).

That section goes on to provide the precise method of termination by either the author (in 17 U.S.C. § 203(a)(1)) or specified heirs of the author after the author's death (17 U.S.C. § 203(a)(2)). 17 U.S.C. § 203(a)(3) provides that exercise of the right of termination may only take place between 35 and 40 years after the date of execution of the grant or, if the grant involves the right of publication, between 35 and 40 years from the date of publication of the work or execution of the grant, whichever occurs first (§ 203(a)(3)). Until the exercise of the termination rights, the grant continues for the term of the

copyright (17 U.S.C. § 203(b)(6)), which is the length of the author's life plus 70 years (17 U.S.C. § 302).

Under Ohio probate law, upon one's death the administrator of his estate takes title to any personal property and any income generated therefrom. *Winters Nat'l Bank v. Riffe*, 20 Ohio St. 2d 72, 206 N.E.2d 212 (1965). Such assets of the estate include choses in action. *Duvall v. Faulkner*, 113 Ohio St. 543, 149 N.E. 868 (1925). Indeed, 17 U.S.C. § 201(d)(1) provides in pertinent part: "The ownership of a copyright may . . . pass as personal property by the applicable laws of intestate succession." Until distribution, an Administrator de bonis non has the duty to collect assets and complete administration of the estate (*Bates v. Creed*, 2 Ohio App. 59 (Hamilton Cty., 1913)), including the payment of estate obligations (*In re Hirsch's Estate*, 146 Ohio St. 393, 66 N.E.2d 636 (1946)).

In the instant case, all of the royalty-paying copyrights owned by Larry Troutman post-date January 1, 1978. The earliest Appellant or decedent's children may exercise their rights of termination, then, is 35 years thereafter, or the year 2013. Accordingly, the lower court's October 26, 2009 Decision finding that the post-1978 copyrights and royalties presently belong to the estate of Larry Troutman is legally correct.

Not content with Congress' clear revision of the copyright laws to incorporate the "termination" concept rather than the earlier "renewal" concept, Petitioner complains:

> "Apparently the Ohio courts are of the view that the 1976 Act somehow changed copyright law in regards to the transfer of ownership and a decedent's interest in copyrights . . . The Petitioner is not convinced that this is the case. . . ." (Petition for Writ of Certiorari, pp. 16-17).

In fact, this is exactly what Congress intended, and did. Petitioner is merely dissatisfied with the result in the instant case, and for the sake of that dissatisfaction requests this Court to review and judicially recast copyright law to achieve Petitioner's desired result.

B. No Grounds For Issuing A Writ Of Certiorari Are Present In This Case

Supreme Court Rule 10 provides in pertinent part:

> "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> . . .
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an

> important federal question in a way that conflicts with relevant decisions of this Court."

As noted by this Court in *National Labor Relations Board v. Pittsburgh Steam Ship Co.*, 340 U.S. 498, 71 S. Ct. 453, 95 L. Ed. 479 (1951):

> "Certiorari is granted only 'in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.'" (340 U.S. at 502).

As also noted by this Court:

> "A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectual interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants . . . 'Special and important reasons' imply a reach to a problem beyond the academic or episodic." (*Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74, 75 S. Ct. 614, 616, 99 L. Ed. 897, 901 (1955)).

Given the clarity of the copyright laws involved in this case, this matter does not even rise to a level of academic or episodic interest. Petitioner points to no division between the circuits as to the interpretation or application of this copyright law, as in fact there is none. Petitioner does not point to any

substantive ambiguity or confusion in the law, but rather Petitioner complains only that applying the clear copyright law to the clear facts of this case, Petitioner will have to wait until her statutorily-provided termination rights mature.

CONCLUSION

This Court's review of this case will at best do nothing to clarify the already clear law in this area and will at worst judicially invalidate copyright laws which have worked well since their enactment. For both reasons, this Court should deny Petitioner's request for a Writ of Certiorari in this case.

Respectfully submitted,

DAVID M. RICKERT
DUNLEVEY MAHAN & FURRY

Counsel for Respondents
Estate of Larry Troutman
and W. Michael Conway,
Administrator De Bonis Non
of the Estate of Larry Troutman

APPENDIX

A – Notification of Proposed Settlement Agreements ..... App. 1

B – Order authorizing settlement ..... App. 24

APPENDIX A

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO CIVIL DIVISION

W. MICHAEL CONWAY, Plaintiff,	:	Case No. 2006-MSC-00330 (Judge McCollum)
v. LYNETTE TROUTMAN, et al. Defendant.	:	**NOTIFICATION OF PROPOSED SETTLEMENT AGREEMENTS** (Filed Jan. 11, 2008)

As referenced in this Court's December 12, 2007 Order, Plaintiff W. Michael Conway, Administrator De Bonis Non of the Estate of Larry Troutman has moved this Court for authority to enter into three different settlement agreements; specifically, a settlement of the wrongful death/survivorship claim by the Estate of Roger Troutman against the Estate of Larry Troutman ("Wrongful Death Settlement"), a settlement with the bonding company for Lynette W. Troutman as fiduciary of the estate of Larry Troutman ("Bonding Company Settlement"), and a settlement of the malpractice claim against the Estate of Charles Smiley, Jr. ("Malpractice Settlement"). In this Court's December 12, 2007 Order, the Court directed W. Michael Conway to serve all interested parties with the terms of the above-referenced proposed settlements.

Accordingly, W. Michael Conway hereby attaches a true and accurate copy of the proposed settlement agreement in the Wrongful Death Action as Exhibit A, a true and accurate copy of the proposed Bonding Company Settlement as Exhibit B, and a true and accurate copy of the proposed Malpractice Settlement as Exhibit C. Such proposed settlement agreements will be heard by this Court at the dates and times set forth in this Court's December 12, 2007 Order.

Respectfully submitted,

/s/ David M. Rickert

David M. Rickert (0010483)
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Attorney for Plaintiff
W. Michael Conway,
Administrator De Bonis
Non of the Estate of
Larry Troutman

[Certificate Of Service Omitted In Printing]

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

Rufus Troutman, as Administrator of the Estate of Roger Troutman, for the Estate of Roger Troutman and its heirs, executors, administrators, insurers, successors, assigns and all persons described in O.R.C. § 2125.02 with respect to Roger Troutman or the Estate of Roger Troutman (hereinafter collectively the "Roger Troutman Estate") and W. Michael Conway, the Administrator De Bonis Non of the Estate of Larry Troutman, for such estate and its heirs, administrators, executors, insurers, successors and assigns (hereinafter collectively the "Larry Troutman Estate") hereby agree as follows:

1. The Larry Troutman Estate will pay to the Roger Troutman Estate two-thirds of all sums currently in or received in the future by the Larry Troutman Estate after payment of all statutory priority claims against the Larry Troutman Estate.

2. In consideration of the promises set forth herein and other good and valuable consideration, the Roger Troutman Estate and the Larry Troutman Estate each hereby releases and discharges the other from any and all past, present and future actions, causes of action, claims, damages, costs, liabilities, expenses, compensation, third-party action, suits at law or in equity, including claims or suits for contribution and/or indemnity of whatever nature arising from the beginning of time to the date of this Settlement Agreement and Release, whether known or

unknown, accrued or unaccrued, or manifested or unmanifested, including but not limited to all claims, including tort and negligence claims, which were or may have been asserted against either Estate based upon or arising from the injuries to or death of Roger or Larry Troutman or which were or may have been asserted against the Larry Troutman Estate in the lawsuit captioned *Estate of Roger Troutman, Deceased, Plaintiff v. Estate of Larry Troutman, Deceased, Defendant,* currently pending in the Montgomery County (Ohio) Common Pleas Court as Case No. 01-2153 (the "Litigation").

3. The parties each agree to forthwith take all steps necessary to seek the review and approval of the terms of this Settlement Agreement by the Probate Courts with jurisdiction over both the Larry Troutman Estate and Roger Troutman Estate. In the event any such Probate Court does not approve all the terms of this Settlement Agreement and Release, this Settlement Agreement and Release shall be void and shall be of no effect whatsoever.

4. In consideration of the promises and payments referenced herein, the Roger Troutman Estate agrees to indemnify the Larry Troutman Estate from any liability, claim, chose in action or cause of action asserted against the Larry Troutman Estate by any person claiming to be an executor, administrator, surviving spouse, child, parent, or next of kin of Roger Troutman entitled to any recovery based upon or arising from the death of Roger Troutman under the Ohio Wrongful Death Statute ("Roger Troutman

Wrongful Death Claim"). The Estate of Roger Troutman further agrees to indemnify the Estate of Larry Troutman for all costs and expenses incurred in defending against any such Roger Troutman Wrongful Death Claim, including reasonable attorney fees, costs and all other expenses incurred in such defense.

5. In consideration of the promises and payments referenced herein, the Larry Troutman Estate agrees to indemnify the Roger Troutman Estate from any liability, claim, chose in action or cause of action asserted against the Roger Troutman Estate by any person claiming to be an executor, administrator, surviving spouse, child, parent, or next of kin of Larry Troutman entitled to any recovery based upon or arising from the death of Larry Troutman under the Ohio Wrongful Death Statute ("Larry Troutman Wrongful Death Claim"). The Estate of Larry Troutman further agrees to indemnify the Estate of Roger Troutman for all costs and expenses incurred in defending against any such Larry Troutman Wrongful Death Claim, including reasonable attorney fees, costs and all other expenses incurred in such defense.

6. Upon approval of this Settlement Agreement and Release by the Probate Courts with jurisdiction over the Larry Troutman Estate and Roger Troutman Estate, respectively, the Roger Troutman Estate shall dismiss the Litigation with prejudice.

7. Each party shall bear its own attorney fees, court costs, and expenses incurred in the Litigation

and in the negotiation and effectuation of this Settlement Agreement and Release.

8. This Settlement Agreement and Release integrates all understandings between the parties, and supersedes all prior representations, undertakings and agreements.

9. It is understood and agreed that this Settlement Agreement and Release is the compromise of a disputed claim, and that the payment and delivery of the aforementioned consideration is not to be construed as an admission of liability on the part of any of the parties or persons referenced herein.

10. This Settlement Agreement and Release is freely and voluntarily executed by all parties hereto after each party has been apprised of all relevant information and upon the advice of counsel. Each party, in executing this Settlement Agreement and Release, does not rely on any inducements, promises or representations of any other party or any other party's counsel.

11. This Settlement Agreement and Release is to be governed by and construed in accordance with the laws of the State of Ohio.

12. This Settlement Agreement and Release may be signed in counterparts, and all such counterparts will collectively have the same effect as if each party had signed the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Release on the date set forth under their signatures.

ESTATE OF
ROGER TROUTMAN

Date: _____ By: _____
Rufus Troutman,
Administrator of the
Estate of Roger Troutman

STATE OF OHIO)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of ___, 2007, by Rufus Troutman, Executor or Administrator for the Estate of Roger Troutman.

_____
Notary Public

ESTATE OF
LARRY TROUTMAN

Date: March 21, 2007 By: W. Michael Conway
W. Michael Troutman
Administrator De Bonis
Non for the Estate of
Larry Troutman
Administrator of the
Estate of Roger Troutman

STATE OF OHIO)
) ss:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 21 day of March, 2007, by W. Michael Conway, Administrator De Bonis Non for the Estate of Larry Troutman.

/s/ Brenda J. Storck
Notary Public

Brenda J. Storck, Notary Public
In and For the State of Ohio
My Commission expires: 5/31/09

EXHIBIT B

SETTLEMENT AGREEMENT

This Agreement is entered into between W. Michael Conway, Administrator De Bonis Non of the Estate of Larry Troutman, deceased ("Mr. Conway"), Fidelity and Deposit Company of Maryland, ("F&D"), and Lynette W. Troutman ("Ms. Troutman") (hereinafter collectively referred to as "the Parties").

WHEREAS, Larry Troutman died intestate on June 29, 1999;

WHEREAS, Ms. Troutman as surviving spouse, was appointed Administrator of the Estate of Larry Troutman in Montgomery County Common Pleas Court, Probate Division Case No. 332899 on November 9, 2000 (hereinafter "the Estate");

WHEREAS, Ms. Troutman posted fiduciary bonds issued by F&D, (hereinafter "the Bonds") including but not necessarily limited to the bonds attached hereto and incorporated by reference as Exhibits A, B and C;

WHEREAS, both before and after her term as Administrator of the Estate, Ms. Troutman converted assets of the Estate for her own use and personal benefit, and otherwise made improper disbursements and distributions of assets of the Estate without Probate Court approval;

WHEREAS, Ms. Troutman was removed as Administrator of the Estate on September 16, 2002, and Mr. Conway was appointed Administrator De Bonis Non of the Estate in her place;

WHEREAS, on July 10, 2003, Mr. Conway, as Administrator De Bonis Non of the Estate of Larry Troutman commenced a surcharge action in the Common Pleas Court of Montgomery County, Probate Division, being Case No. 344238 (hereinafter "the Surcharge Action");

WHEREAS, the Parties participated in a mediation to resolve their differences on November 10, 2005;

WHEREAS, as a result of such mediation, the Parties reached a settlement agreement with respect to the Surcharge Action and certain issues which have arisen in the Estate, subject to court approval;

WHEREAS, the Parties believe that such settlement is reasonable and in the best interest of all parties;

WHEREFORE, the Parties agree as follows:

1. Upon approval of this Agreement by the Probate Court as set forth in paragraph no. 3 below, F&D agrees to remit to Mr. Conway as Administrator De Bonds Non of the Estate the sum of $100,000.00 in full satisfaction of its obligation on the Bonds. Such payment by F&D shall operate to reduce Ms. Troutman's liability to the Estate. Provided, however, this Agreement shall not otherwise affect or discharge Ms. Troutman's liability to the Estate.

2. Upon receipt of the payment referenced in paragraph no. 1 above, Mr. Conway agrees to dismiss his claims against F&D in the Surcharge Action with prejudice, and to dismiss his claims against Ms. Troutman in the Surcharge Action without prejudice.

3. Except for the obligations of the Parties as set forth in paragraph no. 4, this Agreement is expressly conditioned upon the Probate Court in the Estate entering an Order approving this Agreement, and including the following additional terms:

A. The Bonds shall be discharged in their entirety, and F&D shall be released from all liability with respect to the Bonds and the Estate.

B. Upon Mr. Conway and/or the Court calculating the amount of Ms. Troutman's

intestate share in accordance with Ohio Revised Code Section 2105.06, and before any distribution to Ms. Troutman, Mr. Conway shall pay the amount of such share to F&D instead of Ms. Troutman, up to a maximum of $100,000.00, in recognition of F&D's right of subrogation against Ms. Troutman. The amount so paid by Mr. Conway to F&D shall reduce Ms. Troutman's obligation to F&D on the Bonds by the amount of such payment, and shall reduce the amount otherwise distributable from the Estate to Ms. Troutman by the amount of such payment. Such payment to F&D shall be made before any other deductions, offsets, or other adjustments in Ms. Troutman's intestate share as calculated under Section 2105.06, and specifically shall be paid before any deductions, offsets or other adjustments relating to the Amended Magistrate's Decision filed on March 3, 2004 in the Estate, the Magistrate's Decision filed on September 16, 2002 in the Estate, or any subsequent proceedings relating to such decisions, it being the intention of the parties that F&D receive a dollar of [sic] dollar return of the $100,000.00 paid by it, up to the amount of Ms. Troutman intestate share of the Estate as exclusively calculated under Section 2105.06.

4. Upon this Agreement being signed by all parties, Mr. Conway agrees to file a motion in the

Estate requesting that the Probate Court enter the Order provided for in paragraph no. 3 above, after hearing, with notice to all potential heirs and their legal counsel, if any, as well as to the parties to this Agreement. The parties, individually or through their counsel, agree to appear at such hearing and request that the Court enter the Order provided for in paragraph no. 3 above. Except for the provisions of this paragraph no. 4, this Agreement is contingent upon and shall be effective only upon Court approval and filing of a final Order consistent with the provisions of paragraph no. 3 above and the intent of this Agreement. In the event that the Court does not approve this Agreement or enter such a final Order, this Agreement shall be rendered null and void and be of no further force or effect.

5. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

6. The Parties represent that they have not assigned to any other person or entity any of the claims which are the subject of this Agreement.

7. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, understandings, promises, and representations made by any party to the other concerning such subject matter. This Agreement may not be modified in any manner except by an instrument in

writing signed by all parties. This Agreement is the result of arms-length negotiations between the Parties, and shall be interpreted without regard to the identity of the drafter. A waiver of any provision of this Agreement in the event of breach thereof shall not constitute a waiver of that or any other provision in the event of any subsequent breach or breaches.

8. Ms. Troutman understands that she has the right to consult with legal counsel prior to signing this Agreement, and acknowledges that she is voluntarily giving up such right. Ms. Troutman understands that this Agreement does not release any claims that the other Parties may have against her, but does release F&D and discharges any obligation F&D has on the Bonds.

9. The Parties have read this agreement, understand its terms, and execute it voluntarily and with full knowledge of its significance.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the dates indicated below.

Witness:

/s/ Pete [Illegible]

/s/ W. Michael Conway
W. Michael Conway,
Administrator De
Bonis Non of the Estate
of Larry Troutman

Witness:

/s/ Brenda J. Storck

Date: 11-22-06

Witness:

_____ _____
Lynette W. Troutman

Witness:

_____ Date: _____

Witness: Fidelity & Deposit
Company of Maryland

_____ By: /s/ Patricia H. Schroeder
Pat Schroeder
Nov. 2, 2007

Witness:

_____

EXHIBIT A

Fidelity and Deposit Company

HOME OFFICE OF MARYLAND *BALTIMORE, MD. 21203*

Probate Court of Montgomery County, Ohio

Estate of Larry Troutman, Deceased

Case No. 326860 Docket_____ Page_____

FIDUCIARY'S BOND
(For Executors and all Administrators)

Amount of Bond $125,000.

The undersigned principal(s), and Fidelity and Deposit Company of Maryland, Surety, are obligated to the State of Ohio in the above amount, for payment of which we bind ourselves and our successors, heirs, executors and administrators, jointly and severally.

The principal has accepted in writing the duties of fiduciary in decedent's estate, including those imposed by law and such additional duties as may be required by the Court.

This obligation is void if the principal performs such duties as required.

This obligation remains in force if the principal fails to perform such duties, or performs them tardily, negligently, or improperly, or if the principal misuses or misappropriates estate assets or improperly converts them to his own use or the use of another.

Date 11-9-00

/s/ [Illegible]
Witness

/s/ x Lynette W. Troutman
Principal
Lynette W. Troutman

Witness

Principal

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
Surety

_____ by /s/ H. R. Miller
Witness *Attorney in Fact*

Harold R. Miller
Typed or Printed Name

Attorney
Charles A. Smiley, Jr.

120 W. Second St., #1600
Address

Dayton, OH 45402

Address
233 Talbott Tower,
Dayton, Ohio 45402

Phone (937) 222-1366

EXHIBIT B

Fidelity and Deposit Company

HOME OFFICE OF MARYLAND *BALTIMORE, MD. 21203*

Probate Court of Montgomery County, Ohio

Estate of Larry Troutman, Deceased

Case No. 332-899 Docket _____ Page ____

ADDITIONAL
FIDUCIARY'S BOND
(For Executors and all Administrators)

Amount of Bond $375,000.00

The undersigned principal(s), and Fidelity and Deposit Company of Maryland, Surety, are obligated

to the State of Ohio in the above amount, for payment of which we bind ourselves and our successors, heirs, executors and administrators, jointly and severally.

The principal has accepted in writing the duties of fiduciary in decedent's estate, including those imposed by law and such additional duties as may be required by the Court.

This obligation is void if the principal performs such duties as required.

This obligation remains in force if the principal fails to perform such duties, or performs them tardily, negligently, or improperly, or if the principal misuses or misappropriates estate assets or improperly converts them to his own use or the use of another.

Date 10-24-01

/s/ x Lynette W. Troutman
Witness *Principal*

//
Witness *Principal*

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
Surety

by /s/ H. R. Miller
Witness *Attorney in Fact*

Harold R. Miller
Typed or Printed Name

Attorney
Charles A. Smiley, Jr.

120 W. Second St., #1600
Address
Dayton, OH 45402

Address
118 W. First St.,
Ste. 233
Talbott Tower
Dayton, Ohio 45402

Phone (937) 222-1366

EXHIBIT C

Fidelity and Deposit Company

HOME OFFICE OF MARYLAND *BALTIMORE, MD. 21203*

Probate Court of Montgomery County, Ohio

Estate of Larry Troutman, Deceased

Case No. 332899 Docket _____ Page _____

ADDITIONAL
FIDUCIARY'S BOND
(For Executors and all Administrators)

Amount of Bond $946,376.00

The undersigned principal(s), and Fidelity and Deposit Company of Maryland, Surety, are obligated to the State of Ohio in the above amount, for payment

of which we bind ourselves and our successors, heirs, executors and administrators, jointly and severally.

The principal has accepted in writing the duties of fiduciary in decedent's estate, including those imposed by law and such additional duties as may be required by the Court.

This obligation is void if the principal performs such duties as required.

This obligation remains in force if the principal fails to perform such duties, or performs them tardily, negligently, or improperly, or if the principal misuses or misappropriates estate assets or improperly converts them to his own use or the use of another.

Date November 26, 2001

	/s/ x Lynette W. Troutman
Witness	*Principal*
	Lynette W. Troutman
Witness	*Principal*
	FIDELITY AND DEPOSIT COMPANY OF MARYLAND
	Surety
	by /s/ H. R. Miller
Witness	*Attorney in Fact*
	Harold R. Miller
	Typed or Printed Name

Attorney
Charles A. Smiley, Jr.

120 W. Second St., #1600
Address
Dayton, OH 45402

Address
118 W. First St.,
Ste. 233
Talbott Tower
Dayton, Ohio 45402

Phone 937-222-1366

EXHIBIT C

SETTLEMENT FULL, FINAL AND COMPLETE RELEASE

1. **THE PARTIES:** "THE PARTIES" as used herein shall only include plaintiff W. MICHAEL CONWAY, Administrator De Bonis Non of the Estate of LAWRENCE TROUTMAN, and Defendant, Bettina Smiley, Administratrix of the Estate of Charles Smiley, Jr.

2. **RELEASE:** For valuable consideration, including but not limited to the payment of the amount of Twenty-Five Thousand Dollars ($25,000.00) paid to W. Michael Conway and his attorney David Rickert; **THE PARTIES** do hereby **RELEASE** and **DISCHARGE *EACH OTHER*** from all claims of any kind or character which they ever had, now have or might in the future have against each other, on account of any and all damages, losses or injuries, known and unknown, either developed or undeveloped,

resulting from an attorney-client relationship that occurred on or in April 2000 through September 2002, as more fully set forth in Case No. 03 CV 06527, currently pending in the Montgomery County Court of Common Pleas. Said Release includes but is not limited to all claims and/or counterclaims which exist or may exist from the beginning of time up to the signing of this Release as it relates only to **THE PARTIES** herein.

As inducement to and as consideration for the payment of the settlement amount, Plaintiff declares that he fully understands the terms of this Settlement and Release and that he voluntarily accepts the settlement amount for the purpose of making full and final compromise of any and all losses, damages and injuries of any type or kind heretofore incurred, now existing, or which may arise hereafter as a direct or indirect result of the claims that were raised or could have been raised in the Action or any other causes of action of any type or kind and any resulting injuries and damages. Plaintiff further warrants that he has entered into this Settlement and Release freely and voluntarily with the advice and consent of his counsel.

THE PARTIES acknowledge that this Release is a full, final and complete Release which fully **RELEASES** and **DISCHARGES THE PARTIES** from any and all claims and/or counterclaims which are in any way related to the above mentioned incident. After **THE PARTIES** sign this Release, they shall be forever barred from bringing any action in law or in

equity, in any court, against each other for anything related to said incident.

3. **CONFIDENTIALITY:** The terms and conditions of this agreement are confidential and are not to be disclosed unless required by a court order.

4. **OHIO LAW:** This Release is contractual and shall be interpreted in accordance with Ohio law and Ohio Revised Code 2307.28(A) and (B).

5. **MISCELLANEOUS: THE PARTIES** fully understand the terms of this settlement and agree that there are no collateral agreements between **THE PARTIES** hereto. Plaintiff represents and warrants that no other person or entity has any interest in the claims, demands, obligations, or causes of action referred to in this Settlement and Release and Plaintiff has the sole right, capacity and exclusive authority to execute this Settlement and Release and receive the sum specified in it and that Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement and Release. W. Michael Conway further acknowledges he has been represented in this settlement proceeding by Attorney David Rickert.

THE PARTIES hereby state and agree that the consideration furnished pursuant to the terms of this Release does not constitute an admission of either fault or liability on the part of any **PARTY** for any claim or allegation relating to the aforementioned litigation.

PLEASE READ CAREFULLY BEFORE SIGNING!
THIS IS A RELEASE OF ALL RIGHTS!

/s/ W. Michael Conway Date: 4-10-07
W. Michael Conway,
Administrator De Bonis
Non of the Estate of Law-
rence Troutman

Witness: /s/ Brenda J. Storck Date: 4-10-07

Print Name: Brenda J. Storck

APPENDIX B

IN THE PROBATE COURT OF MONTGOMERY COUNTY, OHIO

W.MICHAEL CONWAY,	:	**CASE NO.: 2006 MSC 00330**
Plaintiff,	:	
vs.	:	**(McCOLLUM, J.)**
LYNETTE TROUTMAN, et al.	:	**ORDER**
	:	(Filed Apr. 11, 2008)
Defendants.	:	

This matter came before the Court for hearing on the request for authority for W. Michael Conway (Conway), Administrator De Bonis Non of the estate of Larry Troutman to enter into two settlement agreements. One agreement settles a wrongful death action pending in the Montgomery County Court of Common Pleas General Division, Case No. 01-CV-2153. The other agreement settles a malpractice action also pending in the Montgomery Court of Common Pleas, General Division, Case No 2003-CV-6527.

All interested persons were served with notice of the hearing and copies of the proposed settlement agreements. Present at the hearing were the parties with counsel. Conway was present with counsel, David Rickert. William Sherman was present as counsel for the Estate of Roger Troutman. Stephen Watring was present as counsel for Fidelity & Deposit Company of Maryland (FDC), the bonding company.

Lynette Troutman was present without her retained counsel. LuAnn Stanley, was present as Guardian Ad Litem for Lace Dior Love Troutman. Vicki Jarvis, was present with counsel Thomas Knoth and Crofford Macklin.

At the hearing, the court considered evidence on the merits of each of the cases, the proposed terms of the settlements, and the benefit of settling the matters to the estate of Larry Troutman. There was only one matter of contention.

FDC issued bond on Lynette Troutman's (Lynette) behalf while she served as administrator of the estate of Larry Troutman. Lynette agreed to the terms of the settlement after mediation, in which she essential [sic] admits to misdirecting some of the funds that should belong to the estate of Larry Troutman. FDC is obligated to cover these losses. FDC requested that Lynette be ordered to repay them from future distributions prior to the estate receiving its share of any misappropriated or misused funds. All other parties were adamantly opposed to this provision. The Court finds the position of FDC untenable.

Based upon the evidence presented, the Court hereby finds that the proposed settlements in the wrongful death action and the malpractice action are in the best interest of the Larry Troutman estate. Pursuant to R.C. §2117.05, this Court hereby grants authority to W. Michael Conway, as Administrator De Bonis Non of the estate of Larry Troutman, to enter and finalize these settlements on the terms as set

forth in the documents attached to Plaintiff's Notification of Proposed Settlement Agreements filed with this court on January 11, 2008. However, the provision for repayment of FDC from Lynette's future distributions from the Larry Troutman estate should also provide that such repayment will occur only after any misappropriated funds that rightfully belong to the estate of Larry Trouotman [sic] are deducted or offset from her distributive share.

IT IS SO ORDERED.

/s/ A. O. McCollum
ALICE O. McCOLLUM,
JUDGE

NOTICE OF FINAL APPEALABLE ORDER

TO THE CLERK: Please serve copies of the foregoing Entry, which may be a final appealable order, to all parties indicated below, on the date indicated below, by ordinary mail.

By: /s/ W [illegible] **Date:** 4-11-08

[Service List Omitted In Printing]